IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION NO. 571 (MS) OF 2006

Zahid Husain, S/o late Bande Hasan, R/o Raj Mahal Hotel Compound, Mallital, Nainital. .....Petitioner.

Versus

1. District Judge, Nainital.
2. Abid Husain, S/o late Bande Hasan, R/o Annapurna Restaurant, Mall Road, Nainital.

.....Respondents.

Dated: 07.06.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Alok Singh, Sr. Advocate, assisted by Sri Anurag Bisaria, Advocate for the petitioner, Sri S.K. Mandal, Advocate for the respondent no.2 and Standing Counsel for the respondent no.1.

By the present writ petition, the petitioner has prayed for a writ of certiorari quashing the order dated 6th May, 2006 passed by the District Judge, Nainital in Appeal No. 9 of 2006.

Briefly stated, a suit was filed by the plaintiff/petitioner claiming for permanent injunction not to interfere in running the shop on the Chabutara. He has submitted that in pursuance of the partition between the family, a right was given to him to run the shop on the Chabutara.

Counsel for the defendant/respondent no. 2 Sri S.K. Mandal has disputed the aforesaid fact and has stated that the petitioner was never permitted to run the shop on the Chabutara at any stage. The Commissioner was appointed in

order to ascertain the position on spot. He has reported to the following effect:-

"3. That after inspection it is found that out of aforesaid dispute land measuring about 7 feet is being used for commercial purpose by the petitioner on the which is in damage condition and rest of the land is also being used for commercial purpose by the respondent, but is not in damaged state."

Sri S.K. Mandal has filed the objections against the Commissioner's report and has stated that the said Chabutara is in a dilapidated shape and no portion of the same is being utilized for the purposes of shop in question.

The trial Court has granted the injunction in favour of the plaintiff. However, the said injunction has been vacated by the appellate Court, Petitioner has submitted that the suit was filed in the year, 2006 and only controversy which has to be resolved in the Civil Suit is as to whether the plaintiff has a right to run the shop on the Chabutara or not and this fact can be decided in the suit itself.

The petitioner has also filed a copy of the compromise, which was executed on 01.03.1986.

However, the petitioner ahs submitted that he is still running the shop on Chabutara and the articles are lying there. This fact has been disputed by the counsel for the defendant Sri S.K. Mandal that at present no business is being carried out on the Chabutara itself and the same is in dilapidated shape.

The trial Court, therefore, is directed to decide the suit itself within a period of two months from the date of presentation of the certified copy of the order. However, if the petitioner is running the shop on the Chabutara, the parties are directed to maintain status quo for the period of two months alone. However, the petitioner shall not change the

structure of the Chabutara for a period of two months. However, this order of status quo and any observations made above, shall not come in the way of the Presiding Officer while deciding the suit itself on merits if possible on day today basis.

Writ petition is disposed of. No order as to costs.

(Rajesh Tandon, J.)

07.06.2006
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